

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 160 Section 160.101 Nature of the Tax</b>
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**TITLE 86: REVENUE**

**PART 160  
SERVICE USE TAX**

**Section 160.101 Nature of the Tax**

- a) The Service Use Tax is a privilege tax imposed on the privilege of using, in this State, tangible personal property that is received anywhere as an incident to a purchase of service from a serviceman, as "serviceman" is defined in the Act. However, if the serviceman would not be taxable under the Service Occupation Tax Act [35 ILCS 115] despite all elements of the sale of service occurring in Illinois, then the tax imposed by the Service Use Tax Act does not apply to the use of such property in this State. Transfers of tangible personal property by de minimis servicemen who incur Use Tax as described in 86 Ill. Adm. Code 140.108 do not constitute sales of service under Section 2(g) of the Service Occupation Tax Act. As a result, customers of such de minimis servicemen do not incur Service Use Tax liability on such transfers.
- b) Any evidence that property was sold by any person for delivery to a person residing in or engaged in business in this State shall be prima facie evidence that such property was sold for use in this State.
- c) Rate
  - 1) The rate of the Service Use Tax after December 31, 1989, is 6.25% of the serviceman's selling price of the tangible personal property transferred by the serviceman as an incident to a sale of service.
  - 2) *On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. (Section 3 of the Act) "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For*

*purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 3-27 of the Act)*

- d) If the property that is purchased from a serviceman as an incident to a sale of service is acquired outside Illinois and used outside Illinois before being brought to Illinois for use here and is nevertheless taxable under the Service Use Tax Act, the tax base on which the tax is computed shall be reduced by an amount which represents a reasonable allowance for depreciation for the period of such prior out-of-State use. A "reasonable allowance for depreciation" is deemed by the Department to be the amount of depreciation determined by use of the straight line method of depreciation.
- e) The date of the purchase of service is deemed to be the date of the delivery, to the user, of the tangible personal property which the serviceman transfers as an incident to a sale of service.
- f) The Service Use Tax Act complements the Service Occupation Tax Act. That is why the Service Use Tax is restricted to cases in which the property is purchased from a serviceman as an incident to a sale of service.
- g) If a serviceman incurring Service Occupation Tax liability is required or authorized to collect the Service Use Tax (see Section 160.115 for further information), the purchaser must pay the tax to the serviceman. The Department will presume that a serviceman is required or authorized to collect the Service Use Tax if he bills tax to the service customer. Stated conversely, if an invoice from a serviceman does not show the tax, the Department will presume that the serviceman is either registered and has included the Service Use Tax in the selling price of the tangible personal property transferred or is a de minimis serviceman incurring a Use Tax liability, in which case there is no collection obligation on the part of the purchaser. This presumption will be overcome only where the Department has evidence that the serviceman and/or the service customer were both aware that the proper tax due was the Service Use Tax and that no action was taken to remit the Service Use Tax by either party to the Transaction. A serviceman need not remit that part of any Service Use Tax collected by him to the extent that he is required to pay and does pay Service Occupation Tax to the Department on his sales of service involving the transfer by him of the same property, provided, however, that the amount paid to the Department is equal to or exceeds the amount collected from the service customer

(Source: Amended at 25 Ill. Reg. 5015, effective March 23, 2001)